

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-138312-01

Date:

August 5, 2002

LEGEND

Taxpayer =

Entity A =

Entity B =

Dates One, Two, Three, =
Four, Five, Six, Seven, Eight

Individual A =

Dear :

This replies to a letter dated June 29, 2001, submitted on behalf of Taxpayer, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the agreement described in § 1.1503-2(g)(2)(i) and the annual certification described in § 1.1503-2(g)(2)(vi)(B) with respect to Entities A and B in accordance with "Schedule A", which we have attached and made part of this ruling letter. Additional information was submitted in letters dated January 24, 2002, and May 12, 2002. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

In re: PLR-138312-01

Individual A is the Vice President and Chief Financial Officer of Taxpayer. The affidavit of Individual A and the facts submitted discuss his reasons for his conclusion that Taxpayer was not required to file the agreements and annual certifications provided under § 1.1503-2(g)(2), and demonstrate that Taxpayer reasonably relied on Individual A's advice.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, § 1.1503-2(g)(2) fixes the time to file an agreement and annual certification. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter to file the agreement described in § 1.1503-2(g)(2)(i) and the annual certification described in § 1.1503-2(g)(2)(vi)(B) for the tax years requested with respect to Entities A and B in accordance with "Schedule A".

No opinion is expressed as to the application of any other section of the regulations or Code to the facts presented.

Further, no opinion is expressed as to the characterization of the losses by Taxpayer as ordinary losses and not capital losses pursuant to IRC § 1231(a)(2) on the sale of substantially all the business assets by Entity A on Date One, and by Entity B on Date Two. In addition, no opinion is expressed regarding Taxpayer's position that no "triggering event" occurred under § 1.1503-2(g)(2)(iii) with respect to the losses of Entity A on Date One, and by Entity B on Date Two.

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The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the agreements and annual certifications. § 301.9100-1(a).

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be associated with the agreements and annual certifications.

Taxpayer's request for an extension of time under § 301.9100-3 to file the documents provided under § 1.1503-2(g)(2)(iii)(B) will be the subject of a separate ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)

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SCHEDULE A

An extension of time has been requested to file the election and agreement provided under § 1.1503-2(g)(2)(i) with respect to Entity A and Entity B for the tax years ended as indicated below			
Tax Year Ended	Date Three	Date Four	Date Six
Entity A	Requested	Requested	Not Requested
Entity B	Not Requested	Requested	Requested

An extension of time has been requested to file the annual certification provided under § 1.1503-2(g)(2)(vi)(B) with respect to Entity A for each of the tax years ended as follows:				
Date Four	Date Five	Date Six	Date Seven	Date Eight